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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

WILLIAM J. CLEARIHUE, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B201950 (Los Angeles County Super. Ct. No. SC084678)

APPEAL from judgments of the Superior Court of Los Angeles County, John L. Segal, Judge. Affirmed.

George W. Coleman for Plaintiff and Appellant.

Rockard J. Delgadillo, City Attorney, Susan D. Pfann, Assistant City Attorney, Peter E. Langsfeld, Nancy E. Wax and Timothy McWilliams, Deputy City Attorneys, for Defendant and Respondent City of Los Angeles.

Law Offices of Robert A. Walker and Robert A. Walker for Defendant and Respondent Benjamin A. Leeds.

INTRODUCTION

Plaintiff William J. Clearihue appeals from a judgment on special verdict in favor of defendant City of Los Angeles (City) and a judgment of nonsuit in favor of defendant Benjamin A. Leeds (Leeds). Plaintiff sought compensation for damage to his home on Revello Drive in Pacific Palisades due to land movement, which he claimed was caused by the City and Leeds. We affirm.

PROCEDURAL BACKGROUND

Plaintiff filed suit against the City, Leeds and Jerry F. Moss (Moss). In his first amended complaint, he alleged causes of action for inverse condemnation and dangerous condition of public property against the City. He alleged causes of action for negligence, nuisance and trespass against Leeds and Moss. The gravamen of his complaint was that the City failed to protect against land movement in the area of plaintiff's property, and Leeds and Moss failed to provide lateral support for plaintiff's property, resulting in damage to plaintiff's property.[1]

The City filed an answer to plaintiff's first amended complaint. Leeds filed a demurrer to plaintiff's first amended complaint on the grounds it was uncertain and failed to state a cause of action. The trial court overruled the demurrer to the cause of action for negligence but sustained the demurrer with leave to amend as to the causes of action for nuisance and trespass.

Plaintiff then filed a second amended complaint, containing the same causes of action. Leeds again demurred on the grounds of uncertainty and failure to state a cause

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[1] Plaintiff had earlier filed suit against the City for inverse condemnation, negligence, nuisance and trespass. As a result of mediation and settlement proceedings, plaintiff and the City entered into an agreement to dismiss the action and toll the statute of limitations. Plaintiff refiled the action within the time period provided by the agreement.

of action. The trial court sustained the demurrer to the nuisance and trespass causes of action without leave to amend.

Moss answered the second amended complaint. Thereafter, plaintiff dismissed the action as to Moss.

Plaintiff filed a motion in limine to exclude any testimony by the City's expert, Robert Hollingsworth, regarding any work performed or opinions formed after he gave his deposition. The City opposed the motion on the grounds it notified plaintiff of the additional work and gave plaintiff the opportunity to take an additional deposition, and plaintiff was guilty of numerous violations of the discovery rules regarding expert witnesses. The trial court denied the motion, explaining, "In light of the delays in the case caused by plaintiff and his expert, and defendant's timely notification and deposition offer, there is no prejudice to plaintiff."

The case proceeded to a jury trial. After plaintiff presented his case, Leeds moved for a nonsuit on the ground plaintiff failed to present evidence showing duty or breach on Leeds's part. The trial court granted his motion.

The City also moved for a nonsuit on the ground plaintiff's evidence amounted to "nothing more than 'speculation, suspicion or conjecture.'" The trial court granted the motion as to plaintiff's inverse condemnation cause of action but denied the motion as to the cause of action for dangerous condition of public property.

The trial continued, and the jury returned a special verdict on the single remaining question, whether plaintiff's "property [was] damaged by a dangerous condition of property owned by the City of Los Angeles." The jury answered, "No."

The court then entered judgments in favor of the City and Leeds.

FACTS

A. *Background*

Plaintiff owns a home at 17700 Revello Drive in Pacific Palisades. It is in the Castellammare slope, north of the intersection of Sunset Boulevard and the Pacific Coast

Highway. The area is the site of an ancient landslide. This fact was unknown in the 1920's, when the City graded streets in the area for development.

About 1950, plaintiff's grandfather purchased two lots at the southwest corner of Revello Drive and Posetano Road. He built a house on the property. Plaintiff lived in the house at various times. He moved back into the house in 1990 and did remodeling as well as having an addition to the house constructed.

The area was prone to landslides and mudslides. In 1969, there was a major landslide dubbed the Posetano Slide. Plaintiff's property was not damaged by any of these slides, including the Posetano Slide.

About 1970, the City installed wooden barricades along Posetano Road and Castellammare Drive to stabilize the area. The barricade poles later began to rot, allowing earth movement.

The area also was affected by the 1994 Northridge earthquake. It damaged sewers in the area, which the City undertook to repair.

Between 1999 and 2003, Leeds owned a property downhill from plaintiff's property. It fronts on Posetano Road and shares a border with plaintiff's property of approximately 25 feet, on the southern border of plaintiff's property. It is undeveloped.

The City owns a second undeveloped property downhill from plaintiff's property. It abuts plaintiff's property on the south and Leeds's property on the west.

About 2000, plaintiff noticed movement and cracking in the house. Plaintiff made a claim with his insurance company. It hired an engineering firm, Proctor Consulting Services, Inc., to examine the property. Engineer Chris Hayes determined that the northeast corner of the house had settled 4.2 inches. By 2006, the corner of the house had settled an additional inch.

Also in 2000, Leeds applied to the City to build a residence on his property. The Palisades Terrace Residence Association (PTRA), of which plaintiff was a member, opposed the permit. PTRA hired geologist E. D. Michael (Michael) to assist it. Michael wrote a report stating that a "postulated incipient landslide" threatened properties in the area.

B. ***Expert Testimony***

1. E. D. Michael

Michael testified on behalf of plaintiff as to a "postulated incipient landslide," that is, a landslide threatened hypothetically to occur in the future.[2] The "postulated incipient landslide" would affect the area and plaintiff's property.

Michael described his postulation as "an educated guess" based on conditions in the area, including cracks in Posetano Road suggesting earth movement near plaintiff's property. Michael acknowledged, however, that he did not do any testing, including subsurface testing, for evidence to support his postulation.[3]

In Michael's opinion, cracks in and around plaintiff's house could have been caused by movement of the landslide, subsidence of the fill on which the house was constructed or a construction defect. Michael did not believe the manner in which the house was constructed was not appropriate for the soil conditions. He did not believe the grading of the area caused the damage.

Michael also testified that beside earthquakes, ground water is the most important factor in causing landslides. Springs were common in the Castellammare area, and he believed the entire Castellammare area should be dewatered. It was Michael's opinion that changing ground water conditions caused the "postulated incipient landslide." Michael did not know why ground water conditions had changed.

Michael did not believe that Leeds's property caused the postulated incipient landslide.

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[2] Michael acknowledged that the term "incipient landslide" is not used in geology textbooks.

[3] Michael was invited to inspect the City's holes and borings in the area but declined to do so.

2. Dr. Awtar Singh

Dr. Singh is a geotechnical engineer. He did not do any independent testing of plaintiff's property or the surrounding area but relied on tests and reports done by others. There was additional testing that he wished he could have performed.

Dr. Singh noted that when the area where plaintiff's house was located was graded, fill was placed on plaintiff's property. He believed the fill was a substantial cause of the damage to plaintiff's property. His beliefs were based on a review of City drawings obtained from the internet.

Using information obtained from Michael, Dr. Singh's office prepared a map of the "postulated incipient landslide." He admitted in his deposition, however, that he did not know when, where, or even whether the "postulated incipient landslide" would move.

Dr. Singh reviewed data from three slope inclinometers[4] placed on a hillside. One of these showed 0.3 to 0.5 inches of movement by the ancient landslide in the direction of the ocean. It was not unusual for properties along Pacific Coast Highway to move toward the ocean, but Dr. Singh was not certain how far up the hillside the motion would take place. Dr. Singh acknowledged that the City was not responsible for this movement.

In Dr. Singh's opinion, cracks in the house next door to plaintiff's were evidence of earth movement. Dr. Singh admitted that he did not know if this house—or plaintiff's house—was built on filled material. Dr. Singh also believed that cracks in plaintiff's driveway were "tell-tale" signs of the "postulated incipient landslide."

Dr. Singh also had information which led him to believe that water leaks on Revello Drive in 1994 and 1998 were partially to blame for the damage to plaintiff's property. However, he did no independent testing regarding the water leaks but merely looked at reports. He did not know whether the leaks came from water lines or sewer lines. He did not know how much water was released in the water or sewer line leaks.

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[4] A slope inclinometer measures earth movement beneath the surface.

He was unaware that one of the water leaks was on private property rather than City property.

Dr. Singh disagreed with Michael that ground water was a significant cause of the "postulated incipient landslide." He acknowledged that it could be a cause of a local landslide.

Dr. Singh prepared a slope stability analysis of the slope between plaintiff's house and Castellamare Drive to the south. A slope stability analysis is done to determine the stability and factor of safety of a hillside. Dr. Singh was "very sure that the factor of safety is very small." He acknowledged that the slope stability analysis could not prove the existence of a landslide. He also acknowledged that he did no subsurface investigation to verify the data he used in his calculation. Additionally, he used soil samples from the active landslide rather than plaintiff's property, which resulted in a showing of lower stability.

When asked about cracks in plaintiff's kitchen, Dr. Singh acknowledged that he did not know when they first occurred or whether they might have resulted from the 1994 Northridge earthquake.

Dr. Singh also acknowledged that Leeds's property was not moving. He could not say that Leeds's property caused or threatened any damage to plaintiff's property.

3. Christopher Hayes

Christopher Hayes (Hayes) is a geotechnical engineer for the Proctor Consulting Group, Inc. (Proctor), which was hired by plaintiff's insurance company in 2004 to evaluate the damage to plaintiff's property. Proctor conducted a manometer[5] survey which showed a 4.2-inch difference in floor levels in the house.

Hayes noted that the damage to the house that he observed was similar to damage reported in 1990 by Ralph Stone & Company, whom plaintiff hired to prepare a geology

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[5] A manometer measures floor levels.

report in conjunction with his application for remodeling permits. Hayes opined that there was no landslide damage to plaintiff's property.

4. Robert Hollingsworth

Robert Hollingsworth (Hollingsworth) is an engineering geologist and geotechnical engineer. He was hired by the City to investigate the damage to plaintiff's property.

Between September 2003 and 2005, Hollingsworth dug five test pits around plaintiff's house and on the rear slope of the property. He drilled and logged three large diameter borings on and adjacent to plaintiff's property, and he installed slope inclinometers near them. He had a surveyor prepare a topographical survey of plaintiff's property and the area between Revello Drive on the north and Castellammare Drive to the south. He also conducted a manometer survey of plaintiff's house.

Hollingsworth also obtained geologic reports on plaintiff's and Leeds's properties, as well as adjacent properties. He reviewed geologic maps and aerial photographs of the area. He analyzed soil samples from the test pits and borings and prepared slope stability analyses.

Based on the foregoing, Hollingsworth concluded that the City was not responsible for the damage to plaintiff's property. Rather, settlement of the property was due to compression or collapse of the fill and natural colluvial material following saturation. Hollingsworth noted that that the 1990 report by Ralph Stone & Company came to a similar conclusion.

Hollingsworth believed that heavy rains in the winter of 2004-2005 saturated the soil, causing settlement in a corner of the house. Manometer surveys done before and after the rains supported his belief. He was unaware of any water leaks during that period.

Hollingsworth also explained that an ancient landslide was one that had occurred in the geologic past. There was no documented movement of the ancient landslide on the Castellammare slope, and Hollingsworth opined that it was unlikely a landslide would

occur there in the future. More specifically, Hollingsworth concluded that the condition of property owned by the City in the area did not create a threat of landslide damage to plaintiff's property. He also did not believe that City property caused the Posetano Slide or any damage to plaintiff's property.

Hollingsworth was critical of Dr. Singh's slope stability analysis. He pointed out that there were a number of errors, including use of the wrong soil strength, which led to the calculation of a lower factor of safety than actually existed.

DISCUSSION

A. *Nonsuit in Favor of Leeds on Cause of Action for Negligence*

On appeal from a judgment of nonsuit, the question is whether plaintiff presented any substantial evidence which would support a judgment in his favor. (*Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1214-1215; *Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 291.) In reviewing the evidence, we give plaintiff's evidence all value to which it is legally entitled, drawing all reasonable inferences in his favor. (*Nally*, *supra*, at p. 291; *Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1580.) We will not draw inferences based on speculation or conjecture, however. (*Kidron*, *supra*, at pp. 1580-1581.) In order to reverse a nonsuit, we must find substantial evidence which would support a judgment in plaintiff's favor under a tenable theory of liability. (*Id*. at p. 1580.)

Plaintiff contends the trial court erred in granting the judgment of nonsuit to Leeds, in that he had an absolute duty to provide lateral support for plaintiff's property, and the evidence showed he failed to provide that support. We disagree.

Plaintiff's interpretation of the law regarding the duty to provide lateral support for adjacent property is erroneous. A landowner does not have an absolute duty to provide lateral support for the adjacent property. Rather, he has an absolute duty to do nothing to withdraw lateral support for the adjacent property. This is why, as Leeds points out, all

the cases on which plaintiff relies involve excavation of property resulting in the withdrawal of lateral support for adjacent property.

In *Empire Star Mines Co. v. Butler* (1944) 62 Cal.App.2d 466, the court explained that "[a]t common law a landowner as a general rule is entitled to have his soil remain in its natural position, without being caused to fall away by reason of excavations or other improvements on neighboring land. [Citation.]" (*Id*. at p. 533.) *Sager v. O'Connell* (1944) 67 Cal.App.2d 27 similarly states that under section 817 of the Restatement of Torts, "'a person who withdraws the naturally necessary lateral support of land in another's possession . . . is liable for a subsidence of such land of the other as was naturally dependent upon the support withdrawn . . . .'" (*Id*. at p. 32.) In other words, "it is essential to recover judgment against an owner that he be shown to be guilty of some act of negligence in connection with the lateral support of [the other's] property." (*Id*. at p. 33.)

Marin Mun. Water Dist. v. Northwestern Pac. R. R. Co. (1967) 253 Cal.App.2d 83, which plaintiff cites, is not to the contrary. It states: "At common law, where one person owns the surface of land and another the subjacent land, the owner of the surface is entitled to have it remain in its natural condition, without subsidence by reason of the subsurface owner's withdrawal of subjacent support. [Citations.] [¶] The same authorities agree that the common law right of subjacent support is closely analogous to that of lateral support [citations] . . . . Under all the authorities, also, the common law obligation of subjacent support is "absolute." [Citations.] The authorities—California courts included—also agree that the common law obligation of lateral support is similarly 'absolute.' [Citations.]" (*Id*. at p. 89.) In context, it is clear that the absolute right is the right not to have the owner of adjacent property withdraw lateral support.

Plaintiff points to no evidence that Leeds was guilty of any negligent act which caused the withdrawal of lateral support for plaintiff's land. Absent an act of negligence, Leeds cannot be held liable for any damage to plaintiff's property. (*Sager v. O'Connell, supra*, 67 Cal.App.2d at p. 33; accord, *Holtz v. San Francisco Bay Area Rapid Transit Dist.* (1976) 17 Cal.3d 648, 652-653.) The trial court therefore did not err in granting a

nonsuit on plaintiff's cause of action against Leeds for negligence. (*Kidron v. Movie Acquisition Corp., supra*, 40 Cal.App.4th at p. 1580.)

B. *Demurrer Sustained as to Causes of Action Against Leeds for Nuisance and Trespass*

The court should not sustain a demurrer without leave to amend if the complaint, liberally construed, can state a cause of action under any theory or if there is a reasonable possibility the defect can be cured by amendment. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) Plaintiff bears the burden of proving the trial court erred in sustaining the demurrer or abused its discretion in denying leave to amend. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459; *Coutin v. Lucas* (1990) 220 Cal.App.3d 1016, 1020.)

On appeal from a judgment of dismissal after a demurrer is sustained without leave to amend, we assume the truth of the complaint's properly pleaded or implied factual allegations. (*Schifando v. City of Los Angeles, supra*, 31 Cal.4th at p. 1081.) We also consider matters which have been or may be judicially noticed. (*Ibid.*; *Sacramento Brewing Co. v. Desmond, Miller & Desmond* (1999) 75 Cal.App.4th 1082, 1085, fn. 3.) We review the trial court's ruling de novo, exercising our independent judgment as to whether a cause of action has been stated as a matter of law and applying the abuse of discretion standard in reviewing the trial court's denial of leave to amend. (*Montclair Parkowners Assn. v. City of Montclair* (1999) 76 Cal.App.4th 784, 790; *Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497-1498.)

In his cause of action for nuisance, plaintiff alleged that Leeds' property "constitutes a private nuisance in that the condition of such property fails to provide lateral support to Plaintiff's property and thereby affects Plaintiff's property and the free use and comfortable enjoyment thereof." As stated above, Leeds had no duty to provide lateral support for plaintiff's property; he had the duty not to take an act which withdrew lateral support from plaintiff's property. Plaintiff did not allege that Leeds took such an act.

Plaintiff relies on the principle "that where conduct which violates a duty owed to another also interferes with that party's free use and enjoyment of his property, nuisance liability arises." (*Cutujian v. Benedict Hills Estates Assn.* (1996) 41 Cal.App.4th 1379, 1389.) Since plaintiff failed to plead a violation of a duty owed, and he has not shown any reasonable possibility that he can do so, the trial court did not err in sustaining without leave to amend Leeds's demurrer to the nuisance cause of action. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, *supra*, 68 Cal.App.4th at p. 459; *Coutin v. Lucas*, *supra*, 220 Cal.App.3d at p. 1020.)

In his trespass cause of action, plaintiff alleged that "[t]he continuing land movement of the LEEDS property and the failure to provide lateral support to Plaintiff's property constitutes a trespass . . . ." Leeds "failed to exercise due care over the property . . . , as a result of which Plaintiff's property has suffered and sustained injury which is manifested by cracking and land movement."

Trespass is the unlawful interference with the possession of real property. (*Elton v. Anheuser-Busch Beverage Group, Inc.* (1996) 50 Cal.App.4th 1301, 1306.) This interference "need not take the form of a personal entry onto the property by the wrongdoer." (*Ibid*.) It "'may [also] be accomplished by setting in motion an agency which, when put in operation, extends its energy to the plaintiff's premises to its material injury.'" (*Ibid*.)

Plaintiff failed to allege that Leeds took any action which set in motion an agency which damaged plaintiff's property. He thus failed to state a cause of action for trespass. (*Elton v. Anheuser-Busch Beverage Group, Inc.*, *supra*, 50 Cal.App.4th at p. 1306.) Again, since plaintiff failed to state a cause of action or demonstrate a reasonable possibility that he can do so, the trial court did not err in sustaining without leave to amend Leeds's demurrer to the trespass cause of action. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, *supra*, 68 Cal.App.4th at p. 459; *Coutin v. Lucas*, *supra*, 220 Cal.App.3d at p. 1020.)

C. *Nonsuit on Inverse Condemnation Cause of Action Against the City*

As stated above, in reviewing a judgment of nonsuit, the question is whether plaintiff presented any substantial evidence which would support a judgment in his favor under a tenable theory of liability. (*Castaneda v. Olsher*, *supra*, 41 Cal.4th at p. 1214; *Kidron v. Movie Acquisition Corp.*, *supra*, 40 Cal.App.4th at p. 1580.) Plaintiff acknowledges the trial court determines the question of inverse condemnation. (*San Diego Metropolitan Transit Development Bd. v. Price Co.* (1995) 37 Cal.App.4th 1541, 1545.) Inasmuch as the trial court is the trier of fact, we defer to its determination of credibility in evaluating whether there is substantial evidence which would support a judgment in plaintiff's favor. (See *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925; *Ullery v. County of Contra Costa* (1988) 202 Cal.App.3d 562, 572.)

In granting the nonsuit, the trial court stated: "This is a court trial on the liability issue. The court finds that plaintiff has not met his burden of proof on the elements of his cause of action for inverse condemnation. In particular, what's missing is there's . . . insufficient evidence to meet the burden of proof on the issue of causation.

The trial court relied on *Dina v. People ex rel. Dept. of Transportation* (2007) 151 Cal.App.4th 1029 and *Ullery v. County of Contra Costa*, *supra*, 202 Cal.App.3d 562 in support of its ruling. The court quoted *Ullery*, *supra*, at page 572 for the principle that "[i]n order for liability in inverse condemnation to lie, a causal connection must exist between the defendant public entity's conduct and plaintiff's damages.'" *Ullery* goes on to state: "Liability in inverse condemnation may be shown where the public improvement was a substantial concurring cause of the damage. [Citations.] There must be a showing of '"a substantial cause-and-effect relationship excluding the probability that other forces *alone* produced the injury." [Citations.]'" (*Ibid.*)

The trial court found that "plaintiff has failed to meet a burden of proof of showing there's any causal connection between any conduct by the City and the plaintiff's damages or that anything the City did or failed to do was a substantial concurring cause of the damage."

The court continued: "Turning to the witnesses, since I will be making the credibility determination of the plaintiff's witnesses . . . , the court discredits the testimony of Mr. Michael and Dr. Singh. There is no incipient landslide. It's admittedly only a hypothesis or a postulated theory and there's no evidence to confirm the theory or postulation.

"Dr. Singh's testimony, the court finds, was not believable, inconsistent with his own testimony and with the testimony of Mr. Michael and occasionally incomprehensible. Several times, Dr. Singh appeared to be making up facts and opinions as he needed them and just made them up as he went along.

"Therefore, the court discredits his testimony in its entirety on this cause of action. In addition, Mr. Michael, whose testimony the court also discredits, testified that the road cut could not have caused any landslide. There is no evidence to support a finding by a preponderance of the evidence that there is any connection between anything the City may have done or failed to do that is causally related to any harm or damage plaintiff may have suffered.

"All plaintiff has proved in his case in chief is that there may be some ground movement, not the City's actions or inactions of any substantial concurring causal relationship to the movement."

In arguing that there is substantial evidence of liability on his cause of action for inverse condemnation, plaintiff relies heavily on the discredited testimony of Michael and Dr. Singh. It is well established that substantial evidence is that "of ponderable legal significance . . . reasonable in nature, credible, and of solid value." (*Estate of Teed* (1952) 112 Cal.App.2d 638, 644.) The trial court found that the testimony of Michael and Dr. Singh did not rise to the level of substantial evidence. We cannot reweigh the evidence (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 598) or accept as true evidence which was rejected by the trial court (see *Watson v. Department of Rehabilitation* (1989) 212 Cal.App.3d 1271, 1293).

Plaintiff points to nothing in the record which, in the absence of the testimony of Michael and Dr. Singh, establishes a causal connection between any action or inaction by

the City and the damage to plaintiff's property. He refers to evidence of water and sewer leaks, but evidence of the existence of these leaks does not establish that they caused the damage to his property. Plaintiff therefore has not met his burden of showing that the trial court erred in granting a nonsuit on his inverse condemnation cause of action. (Cal. Rules of Court, rule 8.204(a)(1); *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115; *Culbertson v. R. D. Werner Co., Inc.* (1987) 190 Cal.App.3d 704, 710.)

D. *Sufficiency of the Evidence to Show a Dangerous Condition on City Property*

When a party challenges the sufficiency of the evidence to support a jury verdict, "we apply the substantial evidence standard of review. [Citations.] In applying this standard, we 'view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor . . . .' [Citation.]" (*Zagami, Inc. v. James A. Crone, Inc.* (2008) 160 Cal.App.4th 1083, 1096.)

The jury found by special verdict that plaintiff's property was not damaged by a dangerous condition of property owned by the City. Plaintiff asserts that the evidence was undisputed that (1) lots owned by the City and Leeds were moving; (2) the Posetano Slide occurred in the vicinity; (3) wooden barricades installed by the City to stabilize Posetano Road rotted away; (4) there was a slide on Leeds's property; and (5) there were water leaks in City lines at the intersection of Posetano Road and Revello Drive. Plaintiff further asserts that the only disputed evidence was that regarding slope stability.

Plaintiff's "undisputed" evidence includes no evidence of causation. As the trial court observed in granting a nonsuit on the inverse condemnation cause of action, the evidence of causation was disputed, with plaintiff's experts disagreeing with one another and giving internally inconsistent testimony on this issue. The City's expert, on the other hand, testified that City property did not cause the Posetano Slide or any damage to plaintiff's property. Viewing the evidence in the light most favorable to the City as the prevailing party, we must conclude that the verdict is supported by substantial evidence. (*Zagami, Inc. v. James A. Crone, Inc.*, *supra*, 160 Cal.App.4th at p. 1096.)

E. ***Motion in Limine to Exclude Subsequent Expert Work***

Plaintiff filed a motion in limine to exclude any testimony by Hollingsworth regarding any work performed or opinions formed after he gave his deposition. The City opposed the motion on the grounds it notified plaintiff of the additional work and gave plaintiff the opportunity to take an additional deposition, and plaintiff was guilty of numerous violations of the discovery rules regarding expert witnesses. The trial court denied the motion, explaining, "In light of the delays in the case caused by plaintiff and his expert, and defendant's timely notification and deposition offer, there is no prejudice to plaintiff."

In support of his contention that the trial court abused its discretion (*Aas v. Superior Court* (2000) 24 Cal.4th 627, 634) in refusing to exclude Hollingsworth's testimony as to work done and opinions formed after his deposition, plaintiff relies on Code of Civil Procedure section 2034.260 (section 2034.260) and *Jones v. Moore* (2000) 80 Cal.App.4th 557. In plaintiff's view, the violation of section 2034.260 requires exclusion of the evidence.

Section 2034.260 addresses the exchange of expert witness information and requires a party to include "[a] brief narrative statement of the general substance of the testimony that the expert is expected to give." (Subd. (c)(2).) In *Jones v. Moore*, *supra*, 80 Cal.App.4th 557, the expert's testimony went beyond the opinions expressed in his deposition. The court held exclusion of this testimony "was justified." (*Id*. at pp. 564-565.) The court explained that "[t]he purpose of section 2034 is to permit parties to adequately prepare to meet the opposing expert opinions that will be offered at trial. '"[T]he need for pretrial discovery is greater with respect to expert witnesses than it is for ordinary fact witnesses [because] . . . [¶] . . . the other parties must prepare to cope with witnesses possessed of specialized knowledge in some scientific or technical field. They must gear up to cross-examine them effectively, and they must marshal the evidence to rebut their opinions." [Citation]' [Citation.] When an expert deponent testifies as to specific opinions and affirmatively states those are the only opinions he intends to offer at

trial, it would be grossly unfair and prejudicial to permit the expert to offer additional opinions at trial." (*Jones*, *supra*, at p. 565.)

Nothing in *Jones* suggests that the trial court does not have discretion to permit expert testimony which goes beyond what was stated in the expert witness list when it is not unfair or prejudicial to do so. The key question is whether the trial court's ruling deprives the opposing party of "a fair opportunity to prepare for cross-examination or rebuttal (*Bonds v. Roy* (1999) 20 Cal.4th 140, 147). Here, the trial court found the City's notification of plaintiff of the additional work and provision of an opportunity to further depose Hollingsworth did not deprive plaintiff of a fair opportunity to prepare for trial. Additionally, it found no prejudice to plaintiff, and plaintiff does not point to any. We consequently find no abuse of discretion in the trial court's ruling.

DISPOSITION

The judgments are affirmed. Defendants are to recover their costs on appeal.

NOT TO BE PUBLISHED

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.